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17 Attorneys for Plaintiff
18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

No. CR 17-00018-CAS

22 Plaintiff,

GOVERNMENT'S EX PARTE APPLICATION
FOR (1) CONTINUANCE OF TRIAL DATE
AND (2) FINDINGS OF EXCLUDABLE
TIME PERIODS PURSUANT TO SPEEDY
TRIAL ACT

23 v.

24 JOSE ARVISO,

25 Defendant.

CURRENT TRIAL DATE: 1/11/22
PROPOSED TRIAL DATE: 1/25/22

CURRENT HEARING DATE: 1/05/22
PROPOSED HEARING DATE: 1/11/22

26 Plaintiff United States of America, by and through its counsel
27 of record, the United States Attorney for the Central District of
28 California and Assistant United States Attorneys Anna P. Farias-
Eisner and Maria Jhai, hereby applies for an order to continue the
date for trial from January 11, 2022 to January 25, 2022, and to
continue the evidentiary hearing current scheduled for January 5,
2022 to January 11, 2022, and for findings that the time period from

1 January 11, 2022 to January 25, 2022 is excludable time under the
2 Speedy Trial Act.

3 Defendant Jose Arviso, by and through his counsel of record,
4 Michael Devereux, opposes this application.

5 The government's application is based on the files and records
6 in this case and such further evidence and argument as the Court may
7 permit.

8 Dated: January 1, 2022

Respectfully submitted,

9 TRACY L. WILKISON
United States Attorney

10 SCOTT M. GARRINGER
11 Assistant United States Attorney
12 Chief, Criminal Division

13 */s/ Maria Jhai*
14 MARIA JHAI
15 ANNA P. FARIAS-EISNER
16 Assistant United States Attorneys

17 Attorneys for Plaintiff
18 UNITED STATES OF AMERICA

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DECLARATION OF MARIA JHAI

I, Maria Jhai, declare, as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I am licensed to practice law in the State of California and am admitted to practice in this Court. I represent the government in this matter.

2. The Indictment in this case was filed on January 13, 2017. A first superseding indictment was filed June 4, 2019.

3. Defendant first appeared before a judicial officer of the court in which the charges in this case were pending on May 17, 2017. The Speedy Trial Act, 18 U.S.C. § 3161, originally required that the trial of defendant commence on or before July 26, 2017.

4. The Court has previously continued the trial date in this matter from July 11, 2017, to January 11, 2022, and found the interim period to be excluded in computing the time within which the trial must commence, pursuant to the Speedy Trial Act.

5. Defendant is detained pending trial. The parties estimate that trial will last 2-3 days. Defendant's co-defendants have pleaded guilty.

6. On August 31, 2021, the Court set the current trial date of January 11, 2022. On December 20, 2021, the Court set an evidentiary hearing date of January 5, 2022. By the government's calculation, the Speedy Trial Act presently requires that defendant's trial commence on or before January 26, 2022.

7. With this application, the government moves to continue the trial date to January 25, 2022 and the evidentiary hearing date to January 11, 2022. The requested continuance is within the time

1 period allowed under the Speedy Trial Act and thus may be granted
2 without implicating defendant's Speedy Trial Act rights.

3 8. The government, however, requests that the Court make
4 findings of excludable time under the Speedy Trial Act. The
5 government requests the continuance in light of the following facts
6 which the government believes demonstrate good cause to support the
7 appropriate findings under the Speedy Trial Act:

8 a. Defendant is charged with a violation of 18 U.S.C.
9 § 371 (conspiracy) (Count One); 18 U.S.C. § 1029(a)(3) (possession of
10 15 or more counterfeit and unauthorized access devices (Count Two);
11 18 U.S.C. § 1029(a)(1) (production, use, and trafficking of
12 counterfeit access devices) (Count Three); 18 U.S.C. § 1029(a)(4)
13 (illegal possession of device making equipment) (Count Four); 18
14 U.S.C. § 1028A (aggravated identity theft) (Counts Five and Six); 18
15 U.S.C. § 1708 (theft and possession of stolen mail) (Count Seven); 21
16 U.S.C. § 841(a)(1), (b)(1)(A) (possession with intent to distribute
17 methamphetamine) (Count Eight), and 18 U.S.C. § 922(g) (felon-in-
18 possession of a firearm) (Count Nine). On November 20, 2020,
19 defendant pleaded guilty to all but one of these charges (possession
20 with intent to distribute methamphetamine in violation of 21 U.S.C.
21 §§ 841(a)(1), (b)(1)(A)). A jury trial on the remaining count is set
22 for January 11, 2022.

23 b. On December 1, 2021, defendant filed motions in limine
24 to (1) exclude testimony of non-percipient witnesses and (2) exclude
25 evidence of contraband. (Dkt. Nos. 238, 239.) The motions remain
26 pending before this Court, and are scheduled to be heard at an
27 evidentiary hearing currently scheduled for January 5, 2022.

1 c. On December 29, 2021, the government learned that an
2 essential government witness has contracted the COVID-19 virus and is
3 presently symptomatic. Under the witness's employer's protocols, the
4 witness is required to quarantine through at least January 2, 2022,
5 at which point release from or continuation of quarantine will be
6 evaluated. This witness is expected to testify both at trial and at
7 the evidentiary hearing on defendant's motions in limine regarding
8 his direct participation in the seizure of the methamphetamine that
9 defendant is charged with possessing, including specifically that
10 this witness is the law enforcement officer who searched defendant's
11 car and found the methamphetamine, as well as a firearm and other
12 contraband.

13 d. In light of this witness's illness and the highly
14 contagious nature of COVID-19, the government believes that a brief
15 continuance is appropriate to ensure that the witness is fully
16 recovered when called upon to give testimony, and -- for the health
17 and safety of jurors, the defendant, and court personnel -- that the
18 witness is non-symptomatic and non-contagious at the time of trial.

19 e. The requested continuance is not based on congestion
20 of the Court's calendar, lack of diligent preparation on the part of
21 the attorney for the government or the defense, or failure on the
22 part of the attorney for the Government to obtain available
23 witnesses.

24 9. Thus, for purposes of computing the date under the Speedy
25 Trial Act by which defendant's trial must commence, the government
26 believes that the time period of January 11, 2022 to January 25,
27 2022, inclusive, should be excluded pursuant to 18 U.S.C.
28 §§ 3161(h)(7)(A)(h) and (7)(B)(i) because the delay results from a

1 continuance granted by the Court on the basis of the Court's finding
2 that: (i) the ends of justice served by the continuance outweigh the
3 best interest of the public and defendant in a speedy trial; and (ii)
4 failure to grant the continuance would be likely to make a
5 continuation of the proceeding impossible, or result in a miscarriage
6 of justice.

7 10. The government likewise believes that the time period of
8 January 11, 2022 to January 25, 2022 should be excluded pursuant to
9 18 U.S.C. § 3161(h)(3)(A) because the delay results from the absence
10 or unavailability of an essential witness, that is the law
11 enforcement witness who is unavailable due to COVID-19.

12 11. The government further believes that the time period of
13 December 1, 2021 to January 25, 2022, inclusive, should be excluded
14 pursuant to 18 U.S.C. § 3161(h)(1)(D), because it constitutes a delay
15 resulting from a pretrial motion, from the filing of the motion
16 through the prompt resolution of the motion.

17 12. Thus, based on the foregoing, the government requests the
18 Court continue the evidentiary hearing in this case from January 5,
19 2022 to January 11, 2022, and the trial date from January 11, 2022 to
20 January 25, 2022, and enter a case-specific order finding excludable
21 time under 18 U.S.C. §§ 3161(h)(7)(A)(h), (7)(B)(i), (h)(3)(A), and
22 (h)(1)(D). Nothing in the Court's order should preclude a finding
23 that other provisions of the Speedy Trial Act dictate that additional
24 time periods are excluded from the period within which trial must
25 commence.

26 13. On December 30, 2021, I communicated with the Court and
27 defense counsel by email regarding the government's proposal to
28 continue the evidentiary hearing and trial date as discussed herein,

1 and I followed that communication with a proposed stipulation to
2 continue the dates. On December 31, 2021, defense counsel responded
3 by email that his client objects to the continuance.

4 I declare, under penalty of perjury and the laws of the United
5 States of America, that the forgoing is true and correct.

6 Executed this 1st day of January 2022, in Los Angeles,
7 California.

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9 */s/ Maria Jhai*
10 MARIA JHAI

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